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HOUSE BILL 3017 By
Kisber

SENATE BILL 3090
By McNally

AN ACT to amend Title 56 of the Tennessee Code Annotated,
relative to the regulation of health maintenance
organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The heading for Tennessee Code Annotated Section 56-32-217, and subsection (a) of Tennessee Code Annotated Section 56-32-217 are amended by deleting all the language contained therein and substituting therefor the following language:

56-32-217. Rehabilitation, liquidation, conservation or supervision of HMOs

(a) Any rehabilitation, liquidation, conservation or supervision of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, conservation or supervision of an insurance company and shall be conducted under the supervision of the commissioner pursuant to chapter 9 of this title, as amended. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, conserve or supervise a health maintenance organization upon any one (1) or more grounds set out in chapter 9 of this title, as amended, or when in the commissioner's opinion the continued operation of

the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

SECTION 2. Subdivision (a)(6) of Tennessee Code Annotated Section 56-32-212 is amended by deleting all the language contained in such subdivision and substituting therefor the following language:

(6) A health maintenance organization must maintain a positive working capital. For purposes of this section only, "working capital" means current assets (including admitted stocks and admitted bonds) minus current liabilities.

SECTION 3. (a) Tennessee Code Annotated Section 56-32-222 is amended by deleting all the language contained therein and substituting therefor the following:

56-32-222. Acquisition of Control of or Merger of a Health Maintenance Organization.

No person may make a tender for or a request or invitation for tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, (or by conversion or by exercise of any right to acquire) be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the health maintenance organization, information required by Tenn. Code Ann. § 56-11-203(b)(1), (2), (3), (4), (5) and (13), and the offer, request, invitation, agreement or acquisition has been approved by the

commissioner. Approval by the commissioner shall be governed by Tenn. Code Ann. § 56-11-203(d)(1) and (2).

(b) Tennessee Code Annotated Section 56-32-221 is amended to add the following as a new, appropriately lettered subsection:

() The Insurance Holding Company System Act of 1986, codified at Title 56, Chapter 11 of the Tennessee Code Annotated, shall be applicable to health maintenance organizations to the extent provided therein, and to the extent provided in Tennessee Code Annotated Section 56-32-222.

(c) Tennessee Code Annotated Section 56-11-201(b) is amended to add the following language as new, appropriately numbered subdivisions:

() "Health maintenance organization" means a health maintenance organization as defined at Tenn. Code Ann. § 56-32-202(6).

() "Health maintenance organization holding company system" means two (2) or more affiliated persons, one of which is a health maintenance organization.

(d) Tennessee Code Annotated Section 56-11-205 is amended by deleting the entire language therein and substituting therefor the following:

56-11-205. Registration of insurers and health maintenance organizations --
Statements -- Disclaimer of affiliation. --

(a) REGISTRATION. Every insurer and every health maintenance organization which is authorized to do business in this state and which is a member of an insurance holding company system or health maintenance organization holding company system shall register with the commissioner, except a foreign insurer or health maintenance organization subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section and Tenn. Code Ann. § 56-11-206(a)(1). Such insurer (but not health

maintenance organizations) shall file a copy of the registration statement and summary of its registration statement as required by subsections (b) and (c) with the National Association of Insurance Commissioners. Such insurer or health maintenance organization shall also file a copy of the summary of its registration statement as required by subsection (c) in each state in which that insurer or health maintenance organization is authorized to do business if requested by the commissioner of that state. Any insurer or health maintenance organization which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by April 30 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any insurer or health maintenance organization which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company or health maintenance organization with the insurance or health maintenance organization regulatory authority of domiciliary jurisdiction.

(b) INFORMATION AND FORM REQUIRED. Every insurer and every health maintenance organization subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer or health maintenance organization and any person controlling the insurer or health maintenance organization;

(2) The identity and relationship of every member of the insurance holding company system or health maintenance organization holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between such insurer or health maintenance organization and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or health maintenance organization, or of the insurer or health maintenance organization by its affiliates;

(B) Purchases, sales, or exchange of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's or the health maintenance organization's assets to liability, other than insurance or provider or enrollee contracts entered into in the ordinary course of the insurer's or health maintenance organization's business;

(E) All management agreements, service contracts and all cost-sharing arrangements other than cost allocation arrangements based on generally accepted accounting principles;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's or the health maintenance organization's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system or health maintenance organization holding company system; and,

(5) Other matters concerning transactions between registered insurers or registered health maintenance organizations and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) SUMMARY OF REGISTRATION STATEMENT. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) MATERIALITY. No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's or health maintenance organization's admitted assets as of December 31 next preceding, shall not be deemed material for purposes of this section.

(e) REPORTING OF DIVIDENDS TO SHAREHOLDERS. Subject to § 56-11-206(b), each registered insurer and each registered health maintenance organization shall report to the commissioner, for informational purposes, all dividends and other distributions to shareholders within five (5) business days following the declaration thereof, and at least ten (10) days prior to their payment. The commissioner shall promulgate regulations that establish procedures to:

(1) Consider promptly the informational prepayment notices and the standards set forth in § 56-11-206(d); and,

(2) Review annually all ordinary dividends within the preceding twelve (12) months.

(f) INFORMATION OF INSURERS. Any person within an insurance holding company system or health maintenance organization holding company system subject to registration shall be required to provide complete and accurate information to an insurer or health maintenance organization, where such information is reasonably necessary to enable the insurer or health maintenance organization to comply with the provisions of this part.

(g) TERMINATION OF REGISTRATION. The commissioner shall terminate the registration of any insurer or health maintenance organization which demonstrates that it no longer is a member of an insurance holding company system or health maintenance organization holding company system.

(h) CONSOLIDATED FILING. The commissioner may require or allow two (2) or more affiliated insurers or two (2) or more affiliated health maintenance organizations subject to registration hereunder to file a consolidated registration statement.

(i) ALTERNATIVE REGISTRATION. The commissioner may allow an insurer or health maintenance organization which is authorized to do business in this state and which is part of an insurance holding company system or health maintenance organization holding company system to register on behalf of any affiliated insurer or health maintenance organization which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) EXEMPTIONS. The provisions of this section do not apply to any insurer, health maintenance organization, information or transaction if and to the extent that the commissioner by rule, regulation, or order may exempt the same from the provision of this section.

(k) DISCLAIMER. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or health maintenance organization or such a disclaimer may be filed by such insurer or health maintenance organization or any member of any insurance holding company system or health maintenance organization holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer or health maintenance organization as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer or health maintenance organization shall be relieved of any duty to register or report under this section which may arise out of the insurer's or health maintenance organization's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(l) VIOLATIONS. The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing is a violation of this section.

(e) Tennessee Code Annotated Section 56-11-206 is amended by deleting the entire language therein and substituting therefor the following:

56-11-206. Transactions within a holding company system -- Standards --
Dividends -- Management of domestic insurers and health maintenance
organizations. --

(a) TRANSACTIONS WITHIN A HOLDING COMPANY SYSTEM.

(1) Transactions within a holding company system to which an insurer or health maintenance organization subject to register is a party shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) Charges or fees for services performed shall be reasonable;

(C) Expenses incurred and payment received shall be allocated to the insurer or health maintenance organization in conformity with customary insurance accounting practices (or, in the case of health maintenance organizations, customary accounting practices applicable to health maintenance organizations) applied;

(D) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and,

(E) The insurer's surplus as regards policyholders (or the health maintenance organization's net worth) following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's (or health maintenance

organization's) outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer or a health maintenance organization and any person in its holding company system may not be entered into unless the insurer or health maintenance organization has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such period:

(A) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments; provided, that such transactions are equal to or exceed:

(i) With respect to nonlife insurers and health maintenance organizations, the lesser of three percent (3%) of the insurer's or health maintenance organization's admitted assets or twenty-five percent (25%) of surplus as regards policyholders (or, with respect to health maintenance organizations, net worth); and,

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer or health maintenance organization makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of

credit to, to purchase assets of, or to make investments in, any affiliate of the insurer or health maintenance organization making such loans or extensions of credit; provided, that such transactions are equal to or exceed:

(i) With respect to nonlife insurers and health maintenance organizations, the lesser of three percent (3%) of the insurer's or health maintenance organization's admitted assets or twenty-five percent (25%) of surplus as regards policyholders (or, with respect to health maintenance organizations, net worth); and,

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;

(C) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's or health maintenance organization's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders (or, with respect to health maintenance organizations, net worth), as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer or health maintenance organization to a non-affiliate, if an agreement or understanding exists between the insurer or health maintenance organization and non-affiliate that any portion of such assets will be transferred to one (1) or more affiliates of the insurer or health maintenance organization;

(D) All management agreements, service contracts and all cost-sharing arrangements other than cost allocations arrangements based on generally accepted accounting principles; and,

(E) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders or the health maintenance organization's enrollees or providers. Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer or health maintenance organization, not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer or a health maintenance organization may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system, if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any twelve-month period for such purpose, the commissioner may exercise the authority under § 56-11-211.

(4) The commissioner, in reviewing transactions pursuant to subdivision (a)(2), shall consider whether the transactions comply with the standards set forth in subdivision (a)(1), and whether they may adversely affect the interests of policyholders (or, in the case of health maintenance organizations, enrollees or providers).

(5) The commissioner shall be notified within thirty (30) days of

any investment of the domestic insurer or health maintenance organization in any one (1) corporation if the total investment in such corporation by the insurance holding company system or health maintenance organization holding company system exceeds ten percent (10%) of such corporation's voting securities.

(b) DIVIDENDS AND OTHER DISTRIBUTIONS.

(1) No domestic insurer and no health maintenance organization shall pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or,

(B) The commissioner shall have approved such payment within such thirty-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of:

(A) Ten percent (10%) of such insurer's surplus as regards policyholders (or, with respect to health maintenance organizations, net worth) as of December 31 next preceding; or,

(B) The net gain from operations of such insurer, if such insurer is a life insurer, or of the net income, if such insurer is not a life insurer, or a health maintenance organization, not including realized capital gains, for the twelve-month period ending

December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's or health maintenance organization's own securities.

(3) Notwithstanding any other provision of law, an insurer or health maintenance organization may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until:

(A) The commissioner has approved the payment of such a dividend or distribution; or,

(B) The commissioner has not disapproved such payment within the thirty-day period referred to above.

(4) A domestic insurer shall pay a dividend or make a distribution to its shareholders only from the insurer's earned surplus; provided, that such insurer may pay a dividend or make a distribution not from earned surplus if the commissioner's approval is first received. As used in this section, "earned surplus" means "unassigned surplus" as reported in the insurer's most recent financial statement.

(c) MANAGEMENT OF DOMESTIC INSURERS AND HEALTH
MAINTENANCE ORGANIZATIONS SUBJECT TO REGISTRATION.

(1) Notwithstanding the control of a domestic insurer or health maintenance organization by any person, the officers and directors of the insurer or health maintenance organization shall not thereby be relieved of any obligation or liability to which they would otherwise be subject to by law, and the insurer or health maintenance organization shall be

managed so as to assure its separate operating identity consistent with this part.

(2) Nothing herein shall preclude a domestic insurer or health maintenance organization from having or sharing a common management or cooperative or joint use of personnel, property or services with one (1) or more other persons under arrangements meeting the standards of subdivision (a)(1).

(d) ADEQUACY OF SURPLUS. For purposes of this part, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves;

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment such investment so warrants; and,

(11) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

These criteria shall also apply to health maintenance organizations, to the extent appropriate.

(f) Tennessee Code Annotated Section 56-11-207 is amended as follows:

(1) to delete the phrase "chapter 1, part 4", and insert therefor the phrase "chapters 1 and 32"

(2) to add the phrase "or health maintenance organization" after the word "insurer" each and every time the word "insurer" appears therein;

(3) to add the phrase "or health maintenance organizations" after the word "insurers" each and every time the word "insurers" appears therein;

(4) to add the phrase "or health maintenance organization's" after the word "insurer's" each and every time the word "insurer's" appears therein;

(g) Tennessee Code Annotated Section 56-11-208 is amended as follows:

(1) to add the phrase "or health maintenance organization" after the word "insurer" each and every time the word "insurer" appears therein;

(2) to add the phrase "enrollees, providers" after the word "policyholders," each and every time the word "policyholders," appears therein;

(h) Tennessee Code Annotated Section 56-11-210 is amended as follows:

(1) to add the phrase "or health maintenance organization" after the word "insurer" each and every time the word "insurer" appears therein;

(2) to add the phrase "or health maintenance organization's" after the word "insurer's" each and every time the word "insurer's" appears therein;

(3) to add the phrase "enrollees, providers" after the word "policyholders," each and every time the word "policyholders," appears therein;

(i) Tennessee Code Annotated Section 56-11-211 is amended as follows:

(1) to add the phrase "or health maintenance organization" after the word "insurer" each and every time the word "insurer" appears therein;

(2) to add the phrase "or health maintenance organization holding company system" after the phrase "insurance holding company system" each and every time the phrase "insurance company holding system" appears therein;

(3) to add the phrase "or health maintenance organization" after the word "insurer" each and every time the word "insurer" appears therein;

(j) Tennessee Code Annotated Section 56-11-212 is amended by deleting the entire language therein and substituting therefor the following:

56-11-212. Assumption of control by commissioner -- Insolvency. --

Whenever it appears to the commissioner that any person has committed a violation of this part which so impairs the financial condition of a domestic insurer or of a health maintenance organization as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, enrollees, providers, creditors, shareholders or the public, the commissioner may proceed as provided in chapter 9 of this title to take possession of the property of such domestic insurer or health maintenance organization and to conduct its business.

(k) Tennessee Code Annotated Section 56-11-213 is amended to add the phrase "or health maintenance organization" after the word "insurer" each and every time the word "insurer" appears therein.

(l) Tennessee Code Annotated Section 56-11-214 is amended as follows:

(1) to add the phrase "or health maintenance organization" after the word "insurer" each and every time the word "insurer" appears therein;

(2) to add the phrase "enrollees, providers," after the word "policyholders" each and every time the word "policyholders" appears therein;

(3) to add the phrase "or health maintenance organization's" after the word "insurer's" each and every time the word "insurer's" appears therein.

SECTION 4. Subsection (c) of Tennessee Code Annotated Section 56-32-203 is amended by designating the current language contained therein as subdivision (1). Furthermore, a new subdivision (2) shall be added to subsection (c) of Tennessee Code Annotated Section 56-32-203 which shall read as follows:

(2) Significant expansions of a health maintenance organization's enrollee population shall be considered a material modification under subdivision (1), necessitating the filing of:

(A) current financial statements showing the health maintenance organization's assets, liabilities, and sources of financial support using the official blank form for health maintenance organizations prescribed by the National Association of Insurance Commissioners, as required by Tenn. Code Ann. § 56-32-203(b)(7);

(B) a description of the proposed plan of marketing, a financial plan which includes a projection of operating results anticipated for the two (2) years following the addition of the new enrollees, and a statement as to the sources of

working capital as well as any other sources of funding, all as required by Tenn. Code Ann. § 56-32-203(b)(8); and,

(C) any other information required to be filed by Tenn. Code Ann. § 56-32-203(b) which, as a result of the expansion of such health maintenance organization's enrollee population, has been materially modified.

This information shall be filed with, and reviewed by, the commissioner as delineated in Tenn. Code Ann. § 56-32-203(c)(1). For purposes of this subsection, expansions of a health maintenance organization's enrollee population which do not exceed ten percent (10%) of such health maintenance organization's existing enrollee population in any six (6) month period shall not be considered a significant expansion of such health maintenance organization's enrollee population.

SECTION 5. (a) Subsections (11) and (12) of Tennessee Code Annotated, Section 56-32-202 are hereby deleted.

(b) Subsection (c) of Tennessee Code Annotated, Section 56-32-217 is hereby deleted.

(c) Tennessee Code Annotated, Section 56-32-232 is hereby deleted.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. For purposes of rulemaking, this act shall take effect immediately, the public welfare requiring it. Sections 1, 2, 4 and 5 of this act shall take effect on July 1, 2000, the public welfare requiring it. Section 3 of this act shall take effect on January 1, 2001, the public welfare requiring it.